APPELLATE CRIMINAL.

1908
April 29.

Before Mr. Justice Sir George Knox and Mr. Justice Aikman.

EMPEROR *v.* MATA PRASAD.*

Criminal Procedure Code, sections 234, 235—*Charge—Misjoinder of charges—Illegality.*

An accused person was charged with and tried for, first, three separate acts of criminal misappropriation committed within a year, and, secondly, two separate offences of forgery with intent to conceal two of such acts of criminal misappropriation. *Held* that this was an illegality not covered by the provisions of section 537 of the Code of Criminal Procedure.

THIS was a point referred by Griffin, J., to a Division Bench. The circumstances out of which the question arose appear from the referring order.

Mr. *M. L. Agarwala*, for the appellant.

The Assistant Government Advocate (Mr. *W. K. Porter*), for the Crown.

GRIFFIN, J.—The appellant in this case has been convicted in one and the same trial on three charges of criminal misappropriation and on two charges of forgery to cover up two items said to have been embezzled. He has been sentenced in the aggregate to 6 years on the charges under section 409, Indian Penal Code, and to 8 years under section 467, Indian Penal Code.

It is contended on his behalf that the trial of the accused was bad, inasmuch as there has been an illegal joinder of charges. I am referred to the rulings in *Subrahmania Ayyar* v. *King-Emperor* (1), *Kasi Viswanathan* v. *King-Emperor* (2) and *Manavala Chetty* v *Emperor* (3).

The point is one that does not appear to have come before his Court. At least I have not been referred to any ruling bearing upon it. It is one of some importance, and I think should be decided by a Bench of two Judges. I accordingly refer the p nt to a Division Bench.

On this reference the following order was passed.

KNOX and AIKMAN, JJ.—We think that the first plea taken in the petition of appeal must be sustained. The appellant was

* Criminal Appeal No. 46 of 1908 against an order of W. R. G. Moir, Additional Sessions Judge of Gorakhpur, dated the 20th November 1907.

(1) (1901) I. L. R., 25 Mad., 61. (2) (1907) I. L. R., 30 Mad., 328.
(3) (1906) I. L. R., 29 Mad., 569.

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charged with three separate acts of criminal misappropriation committed within one year. He was also charged with having committed two separate offences of forgery. All these five offences were tried together at one and the same trial. The joint trial of these five offences cannot be supported by any provision contained in the Code of Criminal Procedure. The series of acts charged do not form the same transaction.

We therefore set aside the conviction and order new trials on charges framed in accordance with law. The three acts of criminal misappropriation may form the subject of one trial. Evidence of forgeries may be given in support of the charges of misappropriation. If it is desired to try the accused for the forgeries that must form the subject of a separate trial.

APPELLATE CIVIL.

1908
May 1.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Karamat Husain.

HIMMAT BAHADUR AND ANOTHER (PLAINTIFFS) *v.* BHAWANI KUNWAR AND ANOTHER (DEFENDANTS).*

Hindu law—Hindu widow—Payment by wife of husband's debts during his lifetime—Voluntary payment—Joint Hindu family—Sale of property belonging to one member of a joint family—Separation—Sale set aside—Rights of persons entitled to such property after separation.

Held that the payment by the wife of a separated Hindu of her husband's debts during his lifetime must be considered in the absence of evidence to the contrary as a voluntary payment, and will not support an alienation by the widow after her husband's death of the estate which has descended to her from him.

Held also that the members of a joint Hindu family must be regarded, so far as concerns the dealings of the family with persons outside it, as but one juristic person.

The managing member of a joint Hindu family sold a property exclusively belonging to one member of the joint family, and the proceeds of the sale were brought into the common purse for the benefit of the family. *Held* that on the sale of that property being set aside after the separation of that member, he could recover the whole property on payment of the whole purchase money, but that he could not claim to have it by paying only a share of the purchase money proportionate to his share in the joint family property

* First Appeal No. 243 of 1905 from a decree of Madho Das, Subordinate Judge of Shahjahanpur, dated the 11th of August 1905.